IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2868 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

R.N.PARMAR

Versus

THE CHIEF EXECUTIVE OFFICER

Appearance:

1. Special Civil Application No. 2868 of 1986

MR SHALIN MEHTA for Petitioner No. 1

M/S TRIVEDI & GUPTA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2001

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner, a Senior Officer of the

respondent-Gujarat Industrial Development Corporation (GIDC), has challenged the order of his dismissal which was subsequently modified by the Appellate Authority into an order reducing him to the rank of Junior Officer for a period of five years.

2. The relevant facts in brief are that the petitioner was working as a Senior Officer at Mehsana in the year 1985, when, mainly on the allegations of illegal and irregular allotment of a large plot of land, a show cause notice and a chargesheet came to be issued to him. Right from the stage of reply to the show cause notice, the factum of irregular and unduly expeditious processing of the application for allotment of the land was not disputed by the petitioner. However, the contention canvassed all throughout on behalf of the petitioner was that the allottee of the plot in question was, at the relevant time, the Chairman of the Managing Committee of the Gandhinagar Electronic Estate and a Member of the Board of Directors of the respondent Corporation. Those very plots were later on allotted to him pursuant to the same application, out of the processing of which the charges were framed. It was also contended that the Appellate Committee of the respondent Corporation had itself reduced the punishment after coming to the conclusion that the petitioner was not totally responsible for the decision which was taken by the Regional Manager in the matter of allotment of the plots in question. Thus, the controversy was narrowed down to the proportionality of the punishment imposed after consideration of the case by the Appellate Committee of the respondent.

2.1 The chargesheet dated 30.5.1985 described in detail the lapses alleged to have been committed by the petitioner in processing of the application dated 11.3.1985. The findings and the report of the enquiry, by and large, hold all the charges proved on the basis of which a second show cause notice proposing the punishment of dismissal was issued on 25.2.1986. In reply to that notice, the petitioner had, inter alia, stated as under:

> "I had not disputed the fact of the application being processed by me; I had also not disputed the lapses alleged to have been committed in processing the application but I have clearly stated the circumstances under which the said lapses had come to be committed. I had practically admitted the charges and the Enquiry Officer had done nothing but held proved the charges which I did not seriously dispute."

".....I processed the incomplete application, sent the same to the Regional Manager where also Shri Jhaveri could prevail upon the Regional Manager and got through his application with the result that the plot in question was allotted to his firm."

".....I put up a note on the application to the Regional Manager pointing out what was not there in the application so that if he had the guts he could refuse the application. I being a small fly in the GIDC was overcome by the supreme authority of Shri Jagdishbhai Jhaveri and he in clear words told me that he would speak to the M.D. of the GIIC and would also talk to the Chief Executive of GIIC and there would not be any difficulty and he would take care of everything. If a man of the rank of Member of Board of Directors asks a subordinate to do a particular thing, the subordinate had no alternative but to do the same otherwise he has to face the wrath from the chair."

".....My fault was that I was the Senior Officer who had no alternative but to carry out the directions of a superior officer who was not only the Member of the Board of Directors of GIDC but the Chairman of the Allotment Committee."

".....I had not gained anything out of the transaction and if your honour kindly appreciate, if I had not done whatever was demanded by Shri Jagdishbhai Jhaveri, I would have certainly invited his wrath and some departmental inquiries against me. I had never in past done such a hot haste and this is my first lapse, which incidentally has not resulted into any financial loss to the GIDC. This would be a lesson to me to be more vigilance in future and never to succumb to any pressures from superiors at whatever cost."

2.2 It is clear from the above statements submitted in defence by the petitioner that irregularities and lapses on the part of the petitioner as well as the processing of application for allotment of land in hot haste have practically been admitted and only the defence of pressure from the superior was pleaded. After consideration of the case of the petitioner in appeal, the Appellate Committee has drawn the conclusion that the

petitioner had not put all the facts in the proposal for allotment of plot; had misguided the Regional Manager and had made undue haste in disposing of the case; had corrected the date in para 45 of the relevant office note and thus tampered with the records and tried to unduly oblige the party without valid reasons. However, the petitioner was not held to be wholly responsible in the entire episode since the ultimate decision to allot the plot was taken by the Regional Manager. Thus, having regard to the involvement of the petitioner, lesser punishment of reduction in rank for a period of five years was imposed.

3. In the facts and circumstances as above, in view of the admitted lapses on the part of the petitioner and the role admittedly played by him before and after the approval of the proposal for allotment of plot and the hot haste in which all transactions were completed, it left no room to doubt the fact that the acts of misconduct alleged against the petitioner were consciously committed. The position held and the clout wielded by the allottee cannot be a complete defence for subversion of the rules on the part of the officers of the Corporation. Therefore, the contention of the petitioner that no punishment at all was justified in the facts of the case cannot be accepted. The involvement of the higher officers and the ultimate decisions having been taken or approved by them can also not exonerate the petitioner from his responsibility to perform his duties in proper manner.

4. The learned counsel for the petitioner Mr.Shalin Mehta vehemently argued that the order of the Appellate Committee was also perverse insofar as the petitioner had, by putting a note, pointed out that several essential particulars were not furnished in the application of the allottee. He also submitted that the charge of undue haste in processing of the application was not duly proved insofar as the petitioner was only concerned with the processing and forwarding of the application while the decision to allot the plot was not taken by him. It was also submitted that the charge of tampering with the records did not find a place in the chargesheet itself. And the conclusion of the Appellate Committee that the petitioner tried to unduly oblige the allottee stood fully explained by overwhelming tremendous pressure brought to bear on the petitioner by the allottee. All these submissions with the grain of truth and justification that they contained, cannot derogate from the admissions by the petitioner as discussed hereinabove; nor do they render the ultimate order of

modified punishment in any way shockingly disproportionate to the admitted acts of misconduct.

It is held by the Supreme Court in APPAREL EXPORT PROMOTION COUNCIL v. A.K.CHOPRA [(1999) 1 SCC 759] that the High Court in its writ jurisdiction should not normally interfere with the factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. Even in the matter of imposition of punishment, unless the punishment imposed by the disciplinary or departmental appellate authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment. It is also observed by the Supreme Court in a recent judgment in TARLOCHAN DEV SHARMA v. STATE OF PUNJAB [AIR 2001 SC 2524] that:

> "15. In the system of Indian Democratic Governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and to do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."

Applying the above ratio and principle in the facts of the present case, it would be clear that the role admittedly played by the petitioner in improper and irregular processing of the application for allotment of the land with undue haste deserved to be visited with the punishment as modified by the Appellate Committee and does not call for interference by this Court in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution.

5. In the facts and for the reasons discussed hereinabove, the petition as far as the challenge to the order of dismissal is concerned did not survive and as

for the challenge to the order of the Appellate Committee modifying the punishment, the same is not interfered and the petition on that count is rejected. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)